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August 24, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

Dear Ms. Searcy

On behalf of KFVE Joint Venture, there is submitted herewith an original and ten (10) copies of its Comments in MM Docket No. 91-221, review of the Commission's regulations governing television broadcasting.

Very truly yours


Joel H. Levy

Enclosures

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BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
SECRETARY

In the Matter of)
)
Review of the Commission's) MM Docket No. 91-221
Regulations Governing)
Television Broadcasting)

TO: The Commission

COMMENTS OF KFVE JOINT VENTURE

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August 24, 1992

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SUMMARY

The television broadcast multiple ownership rules should be amended to permit ownership of two television stations in a market that has at least ten operating commercial and educational television broadcast stations. Consolidation of ownership in markets that are well served would permit independent television stations -- whether operating in the UHF or VHF band -- to strengthen their financial structure and to realize cost savings that would enhance their ability to provide more public interest and local programming. No distinction should be drawn between UHF and VHF facilities which choose to consolidate ownership. Thus, a VHF station should be permitted to buy another VHF station and a network affiliate, whether operating in a VHF or UHF mode, should be permitted to own a VHF or UHF independent.

Time brokerage agreements among television broadcast stations should be left unregulated. No restrictions on the brokerage of time by one television station of the facilities of another station need be imposed in the absence of any evidence of abuse. Innovative time brokerage agreements should be encouraged. The responsibility of the licensee to discharge its public interest programming responsibilities and to control the facility are sufficient at this time to assure operation in the public interest without further restrictions.

Network television program suppliers should be permitted to engage in "dual networking". The extent of competition among program suppliers on cable networks, through syndicated programming, and from vertically integrated foreign owned production companies provides enough competition to the national networks to preclude them from dominating the distribution of commercial programming even if they are allowed to operate multiple networks. Enlarging the number of network program suppliers will provide local independent television stations with greater options and access to more programming at reasonable cost to enhance their viability and their ability to program to meet local needs.

BEFORE THE

Federal Communications Commission

In the Matter of)	
)	
Review of the Commission's)	MM Docket No. 91-221
Regulations Governing)	
Television Broadcasting)	

TO: The Commission

COMMENTS OF KFVE JOINT VENTURE

KFVE Joint Venture, licensee of television broadcast Station KFVE, Channel 5, Honolulu, Hawaii, herewith submits its "Comments" in response to the Notice of Proposed Rule Making in the above docket, released June 12, 1992 (hereinafter "Notice"). KFVE is the licensee of the only independent general market English language television broadcast station serving Honolulu, a facility which was constructed and put on the air by the current licensee on February 7, 1988. These comments are submitted in support of certain of the Commission's proposals set forth in the Notice. KFVE particularly urges the Commission to permit ownership of more than one television broadcast station in a market and urges liberalization or repeal of certain of the rules regarding multiple ownership, dual networking and the like, all of which were put in place many years ago when the total universe of video distribution systems had

not produced the remarkable number of quantitative choices that are now available to the bulk of the American public.^{1/}

A. Television Duopoly Issues

The Commission has requested comment (para. 19 and 20) on the local duopoly rules that are now embodied in Section 73.3555 of the Commission's Rules and which prohibit ownership of cognizable interests in television stations with overlapping Grade B contours. In addition to proposing a possible relaxation of the rule to permit common ownership where the prohibited overlap occurs in the Grade B area but not in the Grade A, the Commission has stated, in paragraph 19 that

"We also seek comment on whether we should further modify our local ownership rules to permit common ownership of television stations with overlapping contours under certain limited circumstances. For example, we could permit combinations involving only UHF stations, thus allowing the licensees of such stations to capture significant economies of scale with respect to administrative, news gathering, and production functions. This alternative would limit mergers to the class of stations that are often handicapped by less favorable signal propagation characteristics and of higher technical operating costs than VHF stations and that tend to be less profitable than their VHF competitors. Moreover, these stations are generally newer and not affiliated with one of the national broadcast networks *** On the other hand, limiting the rule change to UHF stations alone would prevent mergers between strong VHF and weak VHF stations. Permitting such mergers might be effective in preserving or improving the service of UHF stations. Accordingly, we also seek comment on whether we should permit the combination of any two

^{1/} See "Broadcasting Television In A Multi-Channel Marketplace." OPP Working Paper No. 26, June 1991.

stations where one of the stations is a UHF facility and where a minimum number of separately owned television stations would remain after the proposed combination."

KFVE's comments herein are directed particularly to the above proposal of the Commission that it consider allowing combinations of UHF television stations to be owned in a market even if there is prohibited overlap. The departure point for KFVE's views on this matter stems from the unique nature of the Honolulu, Hawaii television market. An isolated island market that has no adjoining large population centers from which other television broadcast stations broadcast or to which the television stations in Hawaii could add to their viewing audience, the market is geographically isolated, overserved with local television broadcast stations, of moderate size, heavily cabled and composed of a number of diverse ethnic groups. In this environment, the survival of independent television broadcast stations is problematic, whether those stations are operating in the VHF or UHF portion of the spectrum.

At the present time, the off-the-air full power television broadcast signals in Honolulu include the following:

<u>Call Letters</u>	<u>Channel</u>	<u>Affiliate</u>
KHON	Channel 2	NBC
KITV	Channel 4	ABC
KFVE	Channel 5	Independent (movies, sports, syndicated English language only)
KGMB	Channel 9	CBS
KHET	Channel 11*	PBS

<u>Call Letters</u>	<u>Channel</u>	<u>Affiliate</u>
KHNL	Channel 13	Independent (Fox Network)
KWHE	Channel 14	Independent Religious
KHAI	Channel 21	Independent/ Japanese
KOBN	Channel 26	Independent Religious
KBFD	Channel 32	Independent/ Korean

In addition to these on-the-air television stations, the Commission has assigned two additional UHF television stations to the market that have not yet been activated on Channels 38 and 44.

The 1990 census data indicates that the 1990 population of the Island of Oahu on which Honolulu is the major city is 836,231 people.^{2/} All of the television broadcast stations are able to serve the entire Island. In addition, the Honolulu market is one of the most heavily cabled television markets in the country. According to A.C. Nielsen Company (as published in the 1992 Broadcasting and Cable Market Place), Honolulu is ranked as the market which has the heaviest penetration of cable household subscribers anywhere in the United States but for three other

^{2/} The city of Honolulu has a 1990 population of 365,272, of which 257,552 are Asian, 97,527 are White, 16,704 are Hispanic, 4,821 are Black, 4,246 are Other, and 1,126 are American Indian/Eskimo. The large Asian group is further subdivided into a number of sub-groups: Japanese, Korean, Filipino, Pacific Islanders, Chinese, Polynesian, etc.

smaller isolated markets on the mainland. The cable penetration of TV households in the Honolulu market is 84.0 percent, exceeded only by the markets of Laredo, Texas, Santa Barbara/Santa Maria/San Luis Obispo and Palm Springs, California with penetration rates of 84.3, 85.0 and 87.0 percent respectively.

The financial history of KFVE since it signed on in 1988 has been most discouraging. Without regard to the precise financial figures, it can be said that the continued existence of KFVE and the other independent stations in the market is not assured. The cost of program acquisition and the competition from long established network stations has made it a difficult and problematic venture to establish even an independent VHF station. The ability of the station to fully serve the community is obviously diminished by its lack of financial success. The station has no news department, a situation which is quite common for independent stations throughout the country and not merely in a market such as Honolulu.

With the number and range of video distribution sources available through cable programming and ten (10) over-the-air broadcast signals that are available in a small market like Honolulu, the potential benefits of consolidation of ownership in the market are substantial. Consolidated ownership of two stations would enable cost savings to occur, as the Commission has noted, in administrative, technical, programming and other areas. It would enable programming resources to be devoted to enhance such

areas as news gathering. It would enhance the ability of a consolidated entity to bargain on more favorable terms for programming. Without the financial strength from such consolidation and with a fractionated and diffuse audience that cannot command fair rates and the resulting profits available in large markets, independent stations, at best, hang on in many instances against economic reality^{3/} and without a reasonable prospect of obtaining that kind of financial health necessary to support public interest broadcast services.^{4/}

KFVE wholeheartedly supports allowing consolidated ownership within a market of at least 10 operating television broadcast stations, a number sufficiently large to alleviate diversity concerns, even if there is also a reduction in the area of prohibited overlap from Grade B to Grade A. While the latter proposal is of no significance in the Honolulu market, which has no adjoining markets for which acquisition of another television station would be unduly impeded by the current Grade B contour overlap rule, dual station ownership in the Honolulu market is an

3/ Indeed, even one of the Honolulu VHF network affiliates is owned by a company in Chapter 11 bankruptcy proceedings: Tak Communications.

4/ It is an unfortunate feature of television broadcast programming in this market that virtually all stations rely on revenue from "informercial" programs run more for the revenue, however small, that may be obtained, than for any real need from an audience or public interest point of view. Similarly, desperate rate cutting to generate revenue at any cost is endemic and does not allow any of the stations to realize the fair economic benefits of their audience delivery.

essential goal which should be embodied in the Commission's rules. Allowing consolidation of a maximum of two stations by one entity would still permit at least five competitive over the air television voices to be maintained. KFVE also urges the Commission, at least for the special market that is Honolulu, not to make distinctions with respect to such consolidated ownership based upon major network affiliation or VHF/UHF channels. Thus, a network affiliate should be permitted to acquire a second station with the only bar being that an affiliate of ABC, CBS or NBC should not be able to buy a station affiliated with another major network. But it should be able to buy a VHF or UHF independent and a VHF or UHF independent should be permitted to buy a VHF major network affiliate.

Similarly, a VHF independent should be permitted to buy a UHF or VHF independent. Not only would such a policy be consistent with the proposed transition to all UHF HDTV broadcasting, but it would recognize the reality that while, as a generality, UHF independent broadcasting has been financially difficult, the success or failure of independent television is not primarily a function of channel position as much as market size and the number of over-the-air competitors. The unfortunate truth is that outside of the very largest markets, like New York and Los Angeles (both of which have a number of VHF independent stations), the success of independent VHF stations is not unvarying. Analysis of recent NAB TV financial data underscores this point.

The NAB 1992 television financial report, Table 117, indicates that in 1991 of independent VHF commercial television stations with revenues under \$25 million the median revenue was \$11,500,000 and the median loss, even for these stations with that level of revenue, was \$276,000.

Table 109 provides an interesting contrast with respect to the supposed truth of the generality that independent UHF stations are in difficult financial straits. That Table shows that for independent UHF stations with revenues of between \$5 and \$10 million half the stations had revenues of close to \$7 million (\$6,908,595) and the group that had such level of revenues had expenses of \$6,921,000. Giving effect to varying accounting and tax treatment that occurs, nevertheless, the average pre-tax profits of this group of UHF stations was \$60,234 and positive cash flow (which is defined as pre-tax profits plus depreciation, amortization and interest) was \$1,542,829.

A further demonstration of the comparability of independent VHF and UHF television financial performance is provided by a comparison of Tables 110 and 117. Table 110 reports on UHF independent television stations with revenues from \$3 to \$5 million and Table 117 supplies revenues for VHF independent stations with under \$25 million in revenue. By comparing the revenues of stations in both Tables that fall in the 25th percentile, the financial performance of the stations is quite comparable without any distinction that can be rationally drawn between UHF and VHF.

Thus, net UHF revenues of \$3,415,000 that resulted in pre-tax losses averaging \$694,000 and cash flow losses of \$7,032 should be compared to net revenues of VHF stations of \$3,554,990 and which, for this VHF group, was associated with pre-tax losses of \$907,614 and a small positive cash flow of \$36,961.

The lesson is clear. Independent TV stations with small revenue bases will lose money whether they are operating in the VHF and UHF band, and, for the figures just shown, the losses for VHF stations was actually substantially greater than for comparable UHF facilities.

This analysis supports the conclusion that duopoly policy in this docket should not be established on the basis of "tendencies" ("Notice", para. 19) regarding the supposed greater financial difficulties of operating independent UHF stations. It is simply not true as to all UHF stations and insufficient as a generality to support an arbitrary policy that discriminates against struggling independent VHF stations like KFVE.

If, against these contentions, the Commission should nonetheless decide to permit dual ownership of TV stations in a way which limits the ownership choices available to VHF stations, KFVE urges the Commission to limit such a policy to the continental United States. Off-shore markets like Honolulu should be permitted ad hoc consideration given the unique characteristics of the market. That consideration can take the form of requiring special

showings on applications or the availability of a liberal waiver policy to the more general rule.

B. Television Time Brokerage

In paragraph 21, the Commission has also requested comment with respect to time brokerage agreements that may be entered into by television broadcast stations. While noting that there is not much evidence now of extensive time brokerage by television broadcast stations, the Commission notes that it has provided a regulatory framework with respect to time brokerage of radio broadcast stations in the recent adoption of rules liberalizing the multiple ownership of radio facilities. The Commission has asked for comment on the extent to which time brokerage or LMAs may raise competitive and diversity concerns, similarly to those found in the radio industry and whether it should restrict LMAs in some fashion in the television station context if the television local ownership rules are relaxed.

KFVE's position on this matter is that the Commission should leave time brokerage agreements in television in an unregulated status whether or not any liberalization of the local TV duopoly rules occurs. Beyond the core licensee responsibility to control its facilities and to make sure that programming is broadcast that serves the ascertained needs of the area, television broadcast licensees should be free to enter into time brokerage agreements with other television stations in the market without regard to the adoption of new television multiple ownership rules. If evidence

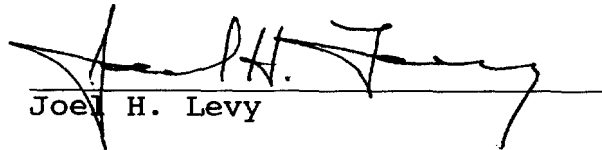
of abuse arises, the Commission will have ample opportunity to evaluate the manner in which time brokerage might impact diversity and competition concerns. At the present time, licensees should be able to experiment free of the restrictions of heavy handed regulation that will stifle innovative arrangements that may strengthen the structure of the industry. The complaint process, antitrust limitations and the need to comply with the core responsibilities imposed by the Commission, and referred to above, would appear to be sufficient in this early stage of the use of these mechanisms to satisfy the most zealous defender of the interests of competition and diversity.

C. The Dual Network Rule

KFVE would also support elimination of the dual network rule, a matter discussed by the Commission in the Notice in paragraphs 29 through 34. As an independent television broadcast station, KFVE is well aware of the difficulties presented by lack of access to a variety of program suppliers with popular programming who have the knowledge and skills to create programming that will draw a mass audience. The national television networks have these skills and yet are barred from producing additional networks that is within their capacity and which would create a viable alternative to Hollywood syndicated programming and multi-channel cable networks. KFVE believes that the public interest in greater competitive markets for broadcast (over-the-air) programming would be enhanced by allowing networks to engage in more than one network

program distribution effort. The only limitation that should be placed upon dual network operation would be that the network should not be allowed to affiliate with each of its networks (if limited to only two) with the same local group. Thus, the affiliate in each market for each of the two network operations would have to be a station owned by competing ownership. This limitation would allow the networks to provide programming to different competing entities at the local level and would not allow one entity to gain access to one network's entire offering to the possible competitive disadvantage of other stations in the market.

Respectfully submitted



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August 24, 1992